

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 19-cr-00055-2
)
DWAYNE LIBERTY,) Chicago, Illinois
) July 23, 2020
Defendant.) 2:37 p.m.

TRANSCRIPT OF PROCEEDINGS - SENTENCING
BEFORE THE HONORABLE ANDREA R. WOOD

APPEARANCES:

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Also Present: Ms. Danielle Stern, U.S. Probation

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1 (Proceedings heard in open court:)

2 THE COURT: Call the case.

3 THE CLERK: 19 CR 55, United States of America versus
4 Liberty.

5 MR. STORINO: Good afternoon, Your Honor.

6 Timothy Storino on behalf of the United States.

7 MS. RAMIREZ: Good afternoon, Your Honor.

8 Viviana Ramirez here with Mr. Dwayne Liberty present in court.

9 THE PROBATION OFFICER: Good afternoon, Your Honor.
10 Danielle Stern on behalf of Probation.

11 THE COURT: Okay. Good afternoon, everyone. First
12 of all, thank you for observing all of the procedures that we
13 have put in place to keep everybody safe for this proceeding.

14 I'm just going to remind everybody who's in the
15 courtroom that today, I'm going to expect you to wear your
16 mask at all times with two exceptions. I believe we've
17 provided some water to those who are going to be doing a lot
18 of speaking today. If you do need to take a sip of water, I
19 would ask that you do so quickly and move your mask just for
20 that purpose and sort of turn the other direction, take a sip
21 of water, and then place your mask back on.

22 And then there will be a point today when Mr. Liberty
23 will have an opportunity to make a statement on his own
24 behalf. Because I feel it's important for me to be able to
25 see him as he's making that statement, I am going to permit

1 him to remove his mask at that time. Okay? But other than
2 that limited exception, I would just ask everybody to continue
3 to wear your mask.

4 If the court reporter has any difficulty hearing you
5 speak, she's going to let me know or let you know, and we'll
6 deal with it.

7 Everybody has their own microphone which has a
8 protective covering over it, as you'll see, so feel free to
9 get as close to it as you need to in your mask in order to
10 make sure that you are heard.

11 And then finally, we are asking people to maintain
12 the 6-foot social distancing distance today. I see that those
13 of you who are in the benches and the gallery are spaced
14 apart. Thank you for that, and I would just ask everybody
15 else in the courtroom to do the same. If, for some reason,
16 you need to move and you're afraid that you can't keep the
17 distance, let me know, and we'll figure it out.

18 Other than that, I expect things to proceed as normal
19 today.

20 Is the Government ready to go forward?

21 MR. STORINO: Yes, Your Honor.

22 THE COURT: Is the defense?

23 MS. RAMIREZ: Yes, Your Honor.

24 THE COURT: Then I'm going to ask that Mr. Liberty be
25 placed under oath. If you would raise your right hand.

1 (The defendant was duly sworn.)

2 THE COURT: Okay. So in advance of the hearing
3 today, I did receive the materials prepared by Probation,
4 including the Presentence Investigation Report and the
5 recommendation from the probation office.

6 I also received a sentencing memo on behalf of the
7 defendant with exhibits including letters of support for
8 Mr. Liberty. And then I also have a sentencing memo that was
9 prepared by the Government.

10 Let me start by asking Mr. Storino, are there any
11 other written materials that the Government is planning to
12 offer into the record today?

13 MR. STORINO: Nothing written, Your Honor. I have
14 seven photographs that I would just like to make part of the
15 record. You already have copies of these photographs, Your
16 Honor. They are scattered throughout the Government's
17 version. So you've seen the photographs; however, I made them
18 a little bigger. And so I just want them to be part of the
19 record on appeal. I gave a copy to defense counsel. I have a
20 copy for the Court. I can provide it at any time during the
21 hearing, but you've seen all these photographs, Your Honor.

22 THE COURT: Are you going to refer to them during
23 your argument?

24 MR. STORINO: I'm just going to refer to them when we
25 talk about brandishing versus otherwise use, so I will mention

1 them at that point. Otherwise, I don't intend to use them.

2 THE COURT: Okay. And were the victims informed of
3 this hearing today?

4 MR. STORINO: Your Honor, we have been discussing the
5 matter with the victims. I've talked to at least one victim
6 personally. They knew of the hearings, they've been tracking
7 the case, and it's my understanding that they do not want to
8 participate today.

9 THE COURT: Is there anybody else other than yourself
10 that you would like to have speak as part of this proceeding?

11 MR. STORINO: No, Your Honor.

12 THE COURT: Okay. And does the Government have any
13 objections or corrections to the Presentence Investigation
14 Report?

15 MR. STORINO: I do not, Your Honor.

16 THE COURT: Ms. Ramirez, do you have any other
17 documents or written materials that you would like to offer
18 into the record?

19 MS. RAMIREZ: No, Your Honor.

20 I do have a family member, Patrice Liberty. She is
21 the -- she stepped out, Your Honor, but she would like to say
22 a couple of things to the Court, so we would appreciate that
23 opportunity once the appropriate time gets here.

24 THE COURT: That would be fine.

25 So my normal practice is to have family members and

1 other supporters speak after I hear arguments from the
2 attorneys but before the defendant makes his statement. I
3 know sometimes, for family members, everything's very
4 stressful and they'd prefer to get it out of the way at the
5 beginning, and I will accommodate that if that's a preference.

6 Do you know, Ms. Ramirez, if they would rather go
7 first or wait until after hearing the arguments?

8 MS. RAMIREZ: Your Honor, I think Ms. Liberty will
9 speak when the Court prefers. I think the reason she stepped
10 out is she does have a very serious medical condition. And so
11 I know that it will be difficult for her to come and go, but
12 whenever the Court's ready, we'll just let her know, and she
13 can make her way to the microphone.

14 THE COURT: Okay. That's fine. And I do usually
15 have the family members speak towards the end because then
16 they have an idea of the types of things that I'm considering
17 and that they might want to add if there's something that they
18 haven't heard anybody else mention that they'd like to have in
19 the record.

20 Have you had a chance to go over the Presentence
21 Investigation Report with Mr. Liberty?

22 MS. RAMIREZ: I have, Your Honor.

23 THE COURT: And do you believe you've answered all of
24 his questions?

25 MS. RAMIREZ: I do.

1 THE COURT: I know that there's an objection to the
2 guideline calculation. Are there any other objections or
3 corrections that you would raise to the report?

4 MS. RAMIREZ: No, Your Honor. Just when we get to
5 the part on the mandatory versus discretionary conditions,
6 there is just one, and I'll address that at that time.

7 THE COURT: Okay. Mr. Liberty, if you can lean
8 towards your microphone. Have you had a chance to go over the
9 Presentence Investigation Report with your attorney?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And did she answer any questions you had
12 about that document?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you need any more time to speak with
15 her before we continue today?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Then we will continue.

18 I'll start by noting for the record that back on
19 June 13th of 2020, Mr. Liberty did plead guilty to Count 2 of
20 the indictment against him which charged him with carjacking
21 in violation of 18 USC Section 2119. Specifically,
22 Mr. Liberty and two other individuals with the intent to cause
23 death and serious bodily harm took by force, violence, and
24 intimidation a motor vehicle that had been transported,
25 shipped, and received in interstate commerce from the person

1 in presence of the two victims, and he is now prepared to be
2 sentenced.

3 The first step in sentencing is, of course, to
4 determine the correct guideline range. After *United States v.*
5 *Booker*, the sentencing guidelines are not mandatory, however,
6 I do have to consider them in connection with a sentence.

7 So the first thing that I will do is calculate the
8 guideline range. I will then consider any formal departures
9 that any side may wish to raise, and I'll hear arguments on
10 the sentencing factors under 18 USC Section 3553(a).

11 I did request that a Presentence Investigation Report
12 be prepared by the Probation Office in this matter. Probation
13 determines that Mr. Liberty has a total offense level of 25, a
14 criminal history category of III, and a resulting guideline
15 range of 70 to 87 months.

16 That calculation was based on a base offense level of
17 20, a six-level increase because a firearm was otherwise used
18 in the offense which means that the conduct did not amount to
19 the discharge of a firearm but was more than brandishing,
20 displaying, or possessing a firearm. That adjustment is
21 contested by Mr. Liberty.

22 Probation did add an additional two levels because
23 the offense involved carjacking and then reduced the offense
24 level by three, two levels for acceptance of responsibility
25 under 3E.1A and an additional one level under 3E1.1B. And all

1 of this led to the conclusion that Mr. Liberty has a total
2 offense level of 25.

3 As I understand it, the defense is going to argue
4 that instead of a six-level increase for the use of a firearm,
5 it should be a five-level increase which would result in a
6 guideline range of 63 to 78 months based on an offense level
7 of 24 and a criminal history category of III.

8 Are there any other guideline issues other than the
9 firearm adjustment that the parties would like to raise today?
10 Anything from the Government?

11 MR. STORINO: No, Your Honor.

12 THE COURT: From the defense?

13 MS. RAMIREZ: No, Your Honor.

14 THE COURT: So I have read the materials, but I would
15 welcome any additional argument that the parties have on the
16 guideline issues. I'll start by letting the Government go
17 first as the party with the burden here. Mr. Storino.

18 MR. STORINO: Thank you, Your Honor. And I'll just
19 highlight the Government's point here, and I think it's
20 important to note that the definitions in the guidelines
21 really are not helpful. And that's not me speaking; that's
22 the Seventh Circuit.

23 The Seventh Circuit cases on this issue really
24 criticize the definitions of "brandishing" and "otherwise use"
25 of not really being very clear. And so I think when you

1 consider that, the answer really is in the case law. And the
2 case that we found that we cited to the Court is Eubanks, and
3 there, the Seventh Circuit said that, quote, "Pointing a
4 weapon at a specific victim created a personalized threat of
5 harm, warranting an otherwise use adjustment." Again,
6 "Pointing a weapon at a specific victim created a personalized
7 threat of harm, warranting the otherwise use adjustment."

8 So Your Honor, if you look at the photographs that we
9 put in the Government's version -- I believe they're on
10 Pages 4, 5, and 6 of the Government's version. And these are
11 the photographs that I've brought here today. I've enlarged
12 them. They're in color. I will submit them to the Court so
13 they are made part of the record. They are Government's
14 Exhibits 1 through 7. You see that that is exactly what the
15 three defendants did here, Mr. Carter, Mr. Liberty, and
16 Mr. Gordon.

17 And, of course, under the guidelines, under the
18 definition of "relevant conduct," it does not matter who
19 specifically did what because this was a jointly-undertaken
20 activity, this was in furtherance of the criminal activity.
21 Of course, pointing a firearm at someone assisted them in
22 taking the car from the victims. And it was reasonably
23 foreseeable to these three carjackers, all of whom had guns,
24 that at some point, a gun was going to be pointed at a person.

25 So I don't think it matters if Mr. Gordon pointed the

1 gun, Mr. Liberty pointed the gun, or Mr. Carter pointed the
2 gun. And to be fair, based on the photographs, we know
3 Mr. Gordon pointed a gun at the female victim, and that's
4 Government Exhibit 3. It's also in the Government's version.

5 It happened inside the garage. Mr. Gordon is
6 pointing the gun directly at the female victim. The gun is
7 maybe a foot to 2 feet away. He also appears to be touching
8 her, although I don't think touching is required under
9 *Eubanks*.

10 Government Exhibits 1 and 2, again, these are in the
11 Government's version, and I can hand these to you if you want
12 them with you, Your Honor. I would just make them part of the
13 record.

14 THE COURT: I do have the Government's version in
15 front of me, so I think this is sufficient.

16 MR. STORINO: And I'll describe them to you so you
17 know which ones I'm talking about.

18 Government Exhibit 1 is either Mr. Liberty or
19 Mr. Carter. The Government does not know. They have a hooded
20 sweatshirt down, pulled very tight over their head, and a
21 firearm is being pointed directly at the male victim. The
22 male victim had just thrown his trash out. He's got his hands
23 up, and I would estimate they're about 3 to 4 feet apart.

24 Government Exhibit 2 is, again, either Mr. Carter or
25 Mr. Liberty. And this, I would say, is the only photograph

1 where the firearm is not being pointed directly at a victim.

2 So under *Eubanks*, a firearm being pointed directly at
3 a person is otherwise use. Here, we have two of the three
4 carjackers who have pointed a firearm directly at one of the
5 victims. One may be a foot away, and the other one 3 to
6 4 feet away. Your Honor, I believe that's enough for the
7 Government to meet its burden beyond a preponderance of the
8 evidence.

9 THE COURT: Okay. Ms. Ramirez.

10 MS. RAMIREZ: Your Honor, my argument's going to be
11 brief because I did outline our position and the case law that
12 we relied on specifically on Page 3, 4, and top of Page 5.

13 In response, however, -- and I'd like to start with
14 saying the following, Judge. This is purely a legal technical
15 differentiation which I will attempt to make because in no way
16 do I want to undermine arguments later, the seriousness of the
17 offense, and truly what will hopefully come across to the
18 Court as my client's remorse for his actions.

19 So looking at the *Eubanks* case, this is a 2010 case
20 that the Government cited, and yes, we do agree that that
21 case, pointing a firearm directly at the individual victims,
22 not a group of people, did fall squarely within the definition
23 as interpreted in *Eubanks*. However, Your Honor, when you look
24 at the *Cureton* case, Seventh Circuit, 2014 that's cited in my
25 position paper and then *Cardena*, a Seventh Circuit 2016 case,

1 what differentiates in my opinion is as the Government has
2 correctly gone through and identified the exhibits and the
3 pictures that do clearly identify Mr. Gordon as he gets out of
4 the car, gun drawn and then, unfortunately, yes, he ends up in
5 that garage with the female victim, there is no issue as to
6 that gun and where it's pointed and the trajectory from
7 Mr. Gordon's leaving the car to his place in the garage. So
8 that is a very specific, square example of otherwise use, not
9 brandish.

10 We turn to the other photos that detail, and
11 Government --

12 THE COURT: But isn't that enough, Ms. Ramirez, then?
13 I guess I'm confused. Are you saying that it does matter
14 whether your client, in particular, was the one who otherwise
15 used the firearm?

16 MS. RAMIREZ: Your Honor, our argument is that this
17 is akin to a case where although the defendants are
18 responsible for reasonable actions by their codefendants, we
19 are also saying that individual participation, culpability, or
20 actions within that framework should be looked at.

21 And where it is a one-level difference where it's
22 brandishing which is either fully showing the firearm, using
23 to intimidate or, as Mr. Gordon and Carter, where we would say
24 that there is a difference in my client with the gun pointing
25 down as shown in Government's Exhibit No. 6, no other

1 photographs, videos, or images to show that at some point,
2 Mr. Liberty had that gun pointing directly at somebody versus
3 it's clearly visible, used to intimidate. And so we're saying
4 that is more in line with the brandishing versus the otherwise
5 use.

6 THE COURT: And I guess I'm trying to distinguish
7 between what would seem to be a 3553(a) argument
8 distinguishing levels of culpability amongst people in the
9 offense versus a very technical application of the guidelines.

10 Do you disagree with the Government's position that
11 for purposes of applying the guidelines, Mr. Liberty is
12 essentially accountable for these reasonably foreseeable
13 actions of his codefendants in furtherance of the offense?

14 MS. RAMIREZ: I do not disagree with that, Your
15 Honor.

16 THE COURT: And so if I believe that Mr. Gordon
17 otherwise used a firearm and, I think, from the description in
18 the papers and in the record, it would seem that two of the
19 people involved in this carjacking, one of whom was definitely
20 Mr. Gordon, the other one we don't know who it was, otherwise
21 used a firearm and one person sort of held the gun down at the
22 side and seems to have been pointing it at the ground, -- I
23 don't know whether that was your client or Mr. Carter -- does
24 it matter if I think two out of the three defendants were
25 otherwise using the firearm and the third person was just

1 brandishing it? Doesn't that third person still get the
2 additional point?

3 MS. RAMIREZ: Your Honor, we'd make the argument that
4 each of the codefendants should be held accountable
5 specifically whether they were brandishing or otherwise using;
6 however, I understand the Court and the question just asked,
7 and I do believe that I do not disagree with the Government's
8 position that it is reasonable to hold all defendants
9 accountable for the actions of one another.

10 I do think it should be an individual thing, but
11 given that, my fallback position, obviously, as the Court
12 properly stated, could also be a 3553 mitigation.

13 THE COURT: Did you have additional argument on this
14 point?

15 MS. RAMIREZ: No, thank you.

16 THE COURT: Okay. Any rebuttal, Mr. Storino?

17 MR. STORINO: Nothing, Your Honor. Thank you.

18 THE COURT: Having looked back through the record at
19 what everybody agrees happened and then who's admitted to
20 doing what, I do think it is significant that there are
21 certain actions that the record seems to clearly reveal were
22 taken by Mr. Gordon, certain actions that were clearly taken
23 by Mr. Carter in connection with primarily the first
24 carjacking to which he stipulated but also, to some extent,
25 the second one that Mr. Liberty was involved in. And then

1 there are certain actions that were taken by one of the
2 defendants, but the record isn't clear as to who did it.

3 There's nothing out of any of those actions that
4 strikes me as being out of line with the offense that was
5 committed such that a particular defendant couldn't have
6 expected it to happen.

7 If you are going to jump out of a vehicle with
8 weapons in order to intimidate people and force them to turn
9 over their vehicle, it seems very reasonable to me that in the
10 course of that, weapons are going to be pointed specifically
11 at those victims in order to get them to do that. And in this
12 case, the record is clear that both the male victim and his
13 wife had guns specifically pointed at them in order to compel
14 them to get down on the ground and to compel them to turn over
15 the vehicle.

16 That is a specific threat. It was intended to compel
17 a specific action, and so it seems to me that the distinction
18 between whether Mr. Liberty was the person who just brandished
19 the firearm by holding it and having it be visible as opposed
20 to being the person who actually targeted a person with it in
21 order to intimidate them does not affect the guideline
22 calculation here.

23 I think it does apply that the firearm was otherwise
24 used in connection with the offense, and therefore, the full
25 six-level enhancement applies.

1 That said, I do make note of the point that
2 Ms. Ramirez is making that the Government does not seem to be
3 able to say that her client is the person who took the most
4 egregious actions here in terms of actually putting the gun
5 against either of the victims. And certainly she can argue
6 that as a 3553(a) factor as to why, in looking at comparable
7 sentencing, that her client should be considered less culpable
8 than the other two, perhaps that his participation was less
9 serious in some way.

10 I'm not saying I would necessarily agree with that,
11 but it's certainly an argument that she can make. I just
12 think it's more appropriately made under the 3553(a) factors.

13 So I'm going to overrule that objection and, given
14 that there were no other objections to the PSR, find that the
15 calculation of the guideline range there is correct, that the
16 correct guidelines range incorporates a total offense level of
17 25, a criminal history category of III, and an advisory
18 guideline range of 70 to 87 months.

19 Any final comments on that guideline calculation from
20 the Government?

21 MR. STORINO: No, Your Honor.

22 THE COURT: From the defense?

23 MS. RAMIREZ: No, Your Honor. Thank you.

24 THE COURT: I believe the parties have framed their
25 sentencing arguments in terms of 3553(a); however, we do still

1 have formal departures under the guidelines.

2 Is there any argument that the Government would like
3 to make under those provisions?

4 MR. STORINO: No, Your Honor.

5 THE COURT: The defense?

6 MS. RAMIREZ: No, Your Honor.

7 THE COURT: Then we will move to the 3553(a) factors.

8 For the record, I'll note that 18 USC Section 3553(a)
9 provides that I must impose a sentence that is sufficient but
10 not greater than necessary to serve the purposes stated in
11 that provision. I must consider the nature and circumstances
12 of the offense and the history and characteristics of the
13 defendant.

14 I am also required to consider the need for the
15 sentence imposed to reflect the seriousness of the offense; to
16 promote respect for the law; and to provide just punishment
17 for the offense; to afford adequate deterrence to criminal
18 conduct; to protect the public from further crimes of the
19 defendant; and to provide the defendant with needed
20 educational or vocational training, medical care, or other
21 correctional treatment in the most effective manner.

22 In addition, I must consider the kinds of sentences
23 available; the policies indicated in 3553(a); the need to
24 avoid unwarranted sentence disparities among defendants with
25 similar records who have been found guilty of similar conduct;

1 the need to provide restitution to any victims of the offense;
2 and, of course, the sentencing range under the guidelines.

3 So I'm going to be considering all of those things.
4 I'm going to hear first from the Government, then I'll hear
5 from defense counsel. And then if there are any friends or
6 family members of Mr. Liberty who would like to speak on his
7 behalf, I would welcome your comments. And then finally,
8 Mr. Liberty will have a chance, if he chooses, to make his own
9 statement.

10 Mr. Liberty, you don't have to make a statement if
11 you don't want to, but you will have that opportunity.

12 Do you understand that you don't have to make a
13 statement?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. First, I'm going to let you hear
16 the arguments that are made before you decide what you want to
17 do.

18 We'll begin with the Government.

19 MR. STORINO: Thank you, Your Honor.

20 Your Honor, the Government feels that a guideline
21 sentence is appropriate here, a sentence in the middle of the
22 guidelines because I don't think there is aggravation to take
23 it above, and I don't think there's mitigation to take it
24 below the guidelines. I think the guidelines capture the
25 conduct.

1 So I'll start with mitigation. To be fair,
2 Mr. Liberty is less culpable, I believe, than his
3 codefendants. I do.

4 I think clearly, Mr. Carter committed two
5 carjackings. He pled to two carjackings, and as Your Honor
6 knows, in that first carjacking, he struck the victim with the
7 butt of a handgun. I don't have any evidence that Mr. Liberty
8 did something like that, I just don't.

9 Mr. Gordon is comparable, too. Mr. Gordon, of
10 course, hasn't pled guilty. He's comparable, Mr. Gordon, but
11 as you see in the photos that the Government has submitted and
12 are part of the record, Mr. Gordon, who is not wearing any
13 face covering, runs right up to the female victim who is eight
14 months pregnant, puts the gun very, very close to her, orders
15 her to the ground on her stomach, and he is touching her while
16 he's doing that.

17 Again, I don't have any evidence that Mr. Liberty did
18 something like that. So I think that's just fair to point out
19 to Mr. Liberty that the conduct of his codefendants was more
20 egregious than his. But does that mean that this case should
21 be removed from the guidelines? I don't think so.

22 He does have some mitigation. Mr. Liberty was never
23 assigned a Social Security number. Your Honor, to me, that's
24 very unusual. I've never seen that before. I'm sure it
25 restricted him in some sense; however, I do think he probably

1 is able to go get that Social Security number and could cure
2 that problem. So the question is: Is that something that's
3 so significant that removes the case from the guidelines? I
4 don't think so.

5 He describes his childhood as okay. His mother
6 described his childhood much better. Mr. Liberty acknowledged
7 that no one in his family was abused, and they were not
8 exposed to any violence in the home. That's in the PSR in
9 Paragraph 60.

10 That's a good thing, obviously; however, that's not
11 the normal case that Your Honor sees day in and day out of
12 persons who are accused of serious crimes. Oftentimes, we see
13 violence in the home, substance abuse in the home, things like
14 that. That is not here for Mr. Liberty. And I think, again,
15 the absence of that indicates that a guideline sentence is
16 appropriate here and that there is not mitigation to go below
17 the guidelines.

18 So Your Honor, you consider his background and then,
19 as a contrast, consider the offense.

20 Your Honor, this offense was traumatizing for the
21 victims. Three persons at 9:00 a.m. in a carjacked car jump
22 out of that car and I think it's fair to use the word "ambush"
23 these two people as they're going to work.

24 Imagine being in your home as the garage door opens,
25 and within seconds, a gun is pointed in your face. That is

1 what happened to these two victims.

2 They are then ordered to the ground in their own
3 home. The female, who is eight months pregnant, visibly
4 pregnant, is ordered to sit on her stomach, lie down on her
5 stomach, as they sort through her purse and look for her keys.
6 Of course, they take the Land Rover and take off.

7 And, Your Honor, committing a crime like this is
8 awful always, right? There's no justification for it, but
9 even here, to what end did they do this?

10 The car is abandoned within hours on the South Side.
11 They just leave it. No ostensible reason why this crime is
12 committed except for joy riding. And then they're back in the
13 other carjacked vehicle, the Toyota Prius.

14 We don't know who was driving, Your Honor. I can't
15 say whether or not Mr. Liberty was driving, but that car gets
16 into a hit and run, hits a vehicle. Someone calls the police,
17 thankfully, calls it out, and Mr. Liberty is arrested with
18 Mr. Carter and Mr. Gordon running down an alley by CPD.

19 So that's the offense, Your Honor.

20 And again, I think the guidelines capture the
21 offense, they capture the aggravation, and I don't think it's
22 justified to go above the guidelines.

23 Your Honor, the last thing I'll mention is
24 Mr. Liberty's criminal history. And, you know, it's
25 strikingly similar to Mr. Carter's because when you look at

1 it, you see relatively minor offenses for what Your Honor is
2 used to, offenses that don't look like they're related to
3 vehicles.

4 You'll remember Mr. Carter had these convictions
5 about resisting and other things like that, but they were all
6 related to the theft of cars.

7 Mr. Liberty's is really the same. He has one
8 conviction at 17 years old for possessing a stolen car. He
9 has another conviction in 2015 in which he was, quote,
10 "checking cars." He was convicted at that time of burglary,
11 but what he was doing is going around a parking lot looking
12 for vehicles. These are not serious offenses, and he was
13 given leniency. Not serious sentences.

14 THE COURT: Is this the first offense, though, where
15 there's sort of a gun involved, a weapon?

16 MR. STORINO: Absolutely. And that, to be fair, is
17 different than Mr. Carter. Mr. Carter had a gun involved in
18 one of his offenses, as Your Honor will remember.

19 But the concerning thing for the Government is,
20 clearly, his conduct was escalating before he was arrested for
21 this offense.

22 The second conviction occurred while he was on some
23 form of supervised release from the first offense, and
24 clearly, his conduct was worsening.

25 And so I think a sentence within the guideline range

1 is appropriate, first of all, to reflect the offense, to
2 reflect what Mr. Liberty and his codefendants did, to reflect
3 putting those victims on the ground, to reflect ambushing them
4 in the morning, to reflect his worsening criminal history but
5 also to reflect his mitigation, his childhood. Your Honor, I
6 think based on all that, a sentence of 80 months is
7 reasonable.

8 Your Honor, one other correction. I made the same
9 error in my sentencing memo to Mr. Carter. I indicated five
10 years supervised release on Page 9 of my sentencing memo.
11 That's inaccurate. The maximum is three years, but unless the
12 Court has any questions, Your Honor, I don't have anything
13 further.

14 THE COURT: And does the Government take issue with
15 any of the conditions of supervised release that were either
16 recommended or not recommended?

17 MR. STORINO: No, Your Honor.

18 THE COURT: Okay. Ms. Ramirez, your turn.

19 MS. RAMIREZ: Thank you, Your Honor.

20 Judge, when I look at this case and the impression
21 that I came into this case after receiving the call and seeing
22 what the charges were, I have now been -- and I've been before
23 the Court before, and so saying this, I haven't had a client
24 prove me more wrong from my initial gut reaction to charges.

25 Your Honor, when I tell you that the very first time

1 I met Mr. Liberty, it wasn't "How much trouble am I in" as it
2 was "How are the victims." And in every conversation, whether
3 he was at Livingston or whether he was at the MCC, that was
4 one of the main focuses of my conversations with him.

5 When I look at the seriousness of this crime -- and
6 he will be the first to acknowledge it, so in no way will I
7 downplay what those victims felt. I won't do it because as an
8 attorney, I cannot imagine being one of those people, but I'll
9 also tell you that Mr. Liberty has never downplayed what those
10 victims felt, and not because he's before the Court today but
11 from day one.

12 So do I believe a guideline range sentence is
13 appropriate? Well, if I just took what the Government said, I
14 would say yes. The problem, though, is when we go back to the
15 nature, the history and characteristics of Dwayne -- and I say
16 this very respectfully -- I told his family that I would be
17 talking about it -- and when I present what I believe are very
18 serious factors from his childhood that definitely impacted
19 and set him on a course, when he told the probation officer
20 and I his background, it was from a perspective of love. It
21 was not negative. It was not casting any negativity on his
22 mother who is here, Patricia, but it was to give me and the
23 probation officer insight.

24 At 15 years old, Patricia finds herself pregnant, a
25 child carrying a child who, for her own reasons, was not able

1 to communicate that to the family. The whole pregnancy is
2 hidden from the family, and she gives birth unaided,
3 unassisted. No hospital, no midwife, no one there to help
4 her.

5 It's not until two days later that Dwayne makes it to
6 the hospital. And he doesn't know what he has. It's either
7 jaundice hypothermia, he's not sure, but that's what he's been
8 told.

9 His birth was never recorded. It wasn't reported
10 until later. And that is why the whole Social Security, the
11 one thing that we use to identify, to get jobs, to apply for
12 benefits, you can't do any of that; but we take it for granted
13 because we've never had to fill something out and say, "I
14 don't have one." So it is a significant identifying factor
15 that every person that lives in the United States needs. He
16 has never had that.

17 What astounded me was when he told me the story of
18 his background, it wasn't pity party, it wasn't "Poor me." It
19 was like, "No, you know, this is what happened," but it was
20 still from a perspective of love toward his family.

21 He suffered from anxiety and depression through his
22 childhood, and that was not diagnosed.

23 His family is a very loving, wonderful family. Every
24 time I've talked to them and his grandma, Elise, his biggest
25 supporter, those letters describe the young man that I have

1 had the benefit to get to know throughout this case. He's
2 positive, he's thoughtful, and he's the first to say, "Man, I
3 messed up" and "Why I messed up."

4 So if we look at the circumstances surrounding his
5 birth, the lack of any prenatal or postnatal care that he may
6 have needed initially and what consequences in that
7 development, how they may have affected him, I believe that
8 it's significant.

9 His mother, hard working, was gone a lot. That's not
10 a bad thing. It's in the report. And he reports it as "Mom
11 was a hard worker. She did what she needed to do to support
12 us." But he also started to think, "I want to be the man of
13 the house. How can I contribute?" And he was not able to.

14 He gets diagnosed, and finally, when he gets
15 arrested, he gets in Cook County Jail, and that's when he
16 starts anxiety and depression medication. And as a result of
17 various medications, he is now on a medication that works for
18 him. And I think that contributes to the clear thinking and
19 his ability to now instead of having the override of anxiety
20 and depression, he now has a clear thought of "This is my path
21 going forward."

22 So there has been a psychological and emotional
23 maturity that he can attest to as a result of being able to
24 have his mental health conditions addressed.

25 When I've talked to Mr. Liberty while he was at

1 Livingston, he let me know, "I'm going to AA classes. I'm
2 attending religious studies."

3 You know, he was just so excited to be able to
4 finally start working on his GED. And when we were talking to
5 the probation officer, one of the careers he was thinking of
6 is maybe "I can be an underwater welder."

7 And just the fact that he would sit there and think
8 about, "What can I do in the future," Your Honor, I'm
9 representing that I personally believe this young man has a
10 lot of potential.

11 Does there need to be a serious punishment because of
12 the seriousness of the actions? Absolutely.

13 When I looked at the pictures and after talking to
14 Dwayne and getting to know him, and Exhibit 7, Your Honor, if
15 this exhibit doesn't illustrate what I truly believe, when he
16 gets out of that car, he's looking down, that gun is down. I
17 absolutely know that he's as responsible as his codefendants
18 for the trauma caused, and he'll tell you he is, but this
19 picture, to me, puts in perspective the young man that I've
20 gotten to know.

21 So looking down the road, we find a punishment that
22 is sufficient but not greater than necessary that gives him
23 the opportunity to get schooling, to finish his GED. We
24 combine that with the strong family support that although has
25 been there, now he's able to appreciate, utilize, and it's

1 brought that family together.

2 You have three beautiful, strong women in the court:
3 His mother, his grandmother, and his auntie who wants to speak
4 to the Court today.

5 And one of the things, too, in his mind that he
6 wanted me to make sure you knew, Judge, he understood that the
7 video sentencing was probably the safest for everybody. This
8 was not a selfish act. This is because he doesn't know that
9 his favorite auntie, she may not be alive when he gets out.
10 That is why we're here present, and we appreciate everybody
11 accommodating us.

12 Your Honor, I can't impress upon you more that this
13 is a thoughtful young man who I've already committed to doing
14 what I can to help him get that Social Security number and to
15 supporting him when he gets out and building a relationship
16 with his family so that they know that they have an extra
17 layer of support. And that is a commitment that I've made to
18 him, that I will make to the Court and I'm hoping you take
19 into consideration when we think what is a sufficient sentence
20 that's not greater than necessary that does deter, that does
21 address the public, that does protect the public but that also
22 says this young man has so much potential, let him prove it.
23 And we submit, Your Honor, that hopefully, a sentence below
24 the guideline range is appropriate for the Court.

25 Thank you so much.

1 THE COURT: Ms. Ramirez, if you know, what is his
2 plan then for once he's released? I know he's working towards
3 his GED. He mentioned wanting to be an underwater welder. Is
4 that sort of the ultimate plan? I assume he's hoping to get
5 his Social Security number so that he can work, --

6 MS. RAMIREZ: Well, absolutely.

7 THE COURT: -- gets his GED. And then what?

8 MS. RAMIREZ: So it all starts with that Social
9 Security number, it all starts with the GED and the classes
10 that he's going to avail himself of while in BOP custody. And
11 then the family and I have talked, and I know they've talked
12 to him, and they understand that based on his community
13 friendships, they want him to have a fresh start. They are
14 coming up with a plan of where can we help him be in order to
15 succeed.

16 He understands that he's going to make different life
17 choices, meaning different friends, different associations.

18 So it is a plan of GED, Social Security and then what
19 other classes along the way while he works. He wants to work.
20 That is one of the things that he looks forward to the most
21 with the Social Security number.

22 So that's the initial plan, Your Honor, and I think
23 that that is going to lay the foundation for him ultimately
24 being that productive member of society that he truly wants to
25 be and that he has the support of his family to be.

1 THE COURT: He has served some custody time
2 previously in the IDOC, is that correct, on this burglary
3 charge from 2015? It looks like he was in custody for a
4 little over a year before he was paroled.

5 MS. RAMIREZ: He did, Your Honor. And then on this
6 case, which was one of the things as well that I hope that the
7 Court takes into consideration, is the seven months that he
8 spent in custody at the Cook County Jail prior to being
9 detained in federal custody on these same charges.

10 THE COURT: So I'd like to give you a chance to
11 respond to this one point about his criminal record that does
12 concern me which is he has these prior offenses. They don't
13 appear to be in the same league in terms of the violence that
14 was used, the use of weapons, threatening people personally in
15 order to get their vehicles, but these prior offenses do
16 involve cars. One would assume checking cars is because
17 you're trying to find one that's ripe to be stolen.

18 This latest crime that he's pled guilty to just seems
19 to take it to another level, actually face to face with the
20 victims, weapons. That situation could have escalated very
21 quickly to something really bad. I can imagine, you know,
22 you've got this couple, the wife's pregnant. They're worried
23 about their unborn child, no doubt. Who knows what they might
24 have irrationally done in the moment to try to protect that
25 child that could have escalated things and led to a lot of

1 people getting hurt.

2 To be specific about what concerns me is Mr. Liberty
3 had just had his parole discharged, he hadn't been out of
4 custody really all that long, I guess, you know, maybe a
5 little over two years, maybe a little over three years, when
6 this happened.

7 Should I be concerned that that prior time that he
8 spent in the IDOC didn't deter him from getting into more
9 trouble, but as soon as he's got that kind of behind him and
10 discharged, it ramps up, and he engages in a crime that's even
11 more serious? Should I be concerned that the time in custody
12 didn't deter him, and, instead, he seemed to be going in the
13 wrong direction?

14 MS. RAMIREZ: So Your Honor, Paragraph 33, the
15 offense which we're discussing, he was 18 years old at the
16 time. I can't tell the Court that I know definitively when
17 that light went on for Mr. Liberty. And on its face, the
18 Court correctly states, you know, he did this time in IDOC,
19 that didn't seem to impact his decision making to make better
20 decisions.

21 Your Honor, all I can submit to the Court is at 18
22 his willingness and desire to go out and, you know, help
23 support his family and get a job, and it's met with roadblock
24 after roadblock because he cannot get employment, full-time,
25 legal employment, not just doing some lawns but honest

1 employment. He continued, obviously, by his involvement in
2 this case to use the thinking processes that had not served
3 him well.

4 I'm asking the Court humbly to -- if you listen to
5 his words today and the time that he has spent in custody and
6 the growth that I think his family could attest to as well as
7 myself that I think this is where the break in that pattern
8 occurs.

9 The fact that he was able to do classes affirmatively
10 that he sought out at Livingston, that he started to lay the
11 groundwork for the tools necessary to be successful, the
12 thinking for a change, the identifying what factors are
13 contributing to my poor decision making, if he has now started
14 to build on that foundation and will continue to do so during
15 this next period of incarceration, then, Your Honor, I would
16 submit that this is the chance that he has after his release
17 to take the cumulative education, the cumulative growth and
18 say, "We're going to give you a chance and not just look at
19 this crime, Paragraph 33, and the current one to determine
20 should I be worried in the future."

21 We can't change backwards, but we know what he's done
22 and what he will continue to do to prove to the Court that he
23 won't be back around and this isn't going to be a
24 merry-go-round for him.

25 THE COURT: Anything further, Ms. Ramirez?

1 MS. RAMIREZ: Thank you, Your Honor.

2 THE COURT: Does the Government have any response to
3 that argument?

4 MR. STORINO: No, Your Honor.

5 THE COURT: Then at this point, if I think it was
6 Patrice Liberty, you wanted to make a statement. So
7 Ms. Liberty, this is an opportunity if you'd like to say
8 something on Mr. Liberty's behalf.

9 Because we're trying to keep everybody safe, I'm
10 going to ask you to use the microphone. There's a microphone
11 over on the corner of the jury box over there. It's got a
12 cover on it. And there's a little blue X on the floor.

13 And whenever you're ready, just state what your name
14 is, and then you can tell me whatever you need to say. And
15 yes, feel free to have a seat and pull it down. That's fine.

16 MS. PATRICE LIBERTY: Hello. My name is
17 Patrice Liberty. I'm Dwayne Liberty's second aunt, second
18 oldest aunt. I just wanted to say Dwayne Liberty is a very,
19 very hard-feeling child. He has always been that way. He's
20 always been the one that would come check on you, to come
21 hands on with making sure everyone in the family is okay.
22 Dwayne has always been that way.

23 I want to say everybody make mistakes, some more than
24 others. You know what I'm saying. He has messed up, but now,
25 as we talk to him and seeing his train of thought, Dwayne has

1 grew a whole lot, like, from trying to make it to knowing what
2 he has to do to make it instead of making dumb decisions, if
3 you kind of get what I'm saying.

4 One thing I miss which -- I miss him coming to check
5 on me. And I want to tell him, Dwayne, I'm going to be okay,
6 so you don't have to worry about me not being here when you
7 get out of here. And I don't feel like saying too much, just
8 to let you know I love you. Okay?

9 That's all, Your Honor. Thank you.

10 THE COURT: Thank you, Ms. Liberty.

11 Okay. Mr. Liberty, you've heard what the
12 Government's attorney had to say, you heard your attorney,
13 you've heard what your aunt had to say. Now, if you would
14 like, it's your turn. As I said before, you don't have to
15 make a statement if you don't want to, but if you do, I will
16 listen to it.

17 Would you like to say something?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. Go ahead. And if you would like
20 to lower your mask so that I can see you better, feel free.
21 If you're more comfortable wearing it, that's fine, too.

22 THE DEFENDANT: Should I stand or just --

23 THE COURT: If you'd like to stand, that's fine.
24 Make sure you kind of turn the microphone up so we can still
25 hear you. I think we'll be able to hear you fine.

1 THE DEFENDANT: Well, I wrote a letter, and I was
2 going to start by saying that I humbly and respectfully bring
3 myself forth at the mercy of this Court today.

4 I would like to start by speaking my peace to all my
5 loved ones that I'm sorry for putting you all through this,
6 through this whole ordeal.

7 And I would just like to thank my lawyer for all of
8 her assistance. Through my time of being incarcerated, she
9 helped me out a lot.

10 And I just want to thank everyone present on behalf
11 of the courts.

12 At the time from the inception of this incarceration,
13 I have grown as an individual mentally and physically.
14 Personally, I know this time away from my everyday freedom
15 will be a constant reminder that one bad choice affects not
16 only me but also other loved ones that I really didn't even
17 know as in the victims. And I just want to take this time to
18 apologize to all the victims and putting them also through
19 this whole ordeal. I'd like to sincerely apologize to them
20 and all their loved ones.

21 I look forward to participating in and finishing all
22 education and mental, physical, and religious programs offered
23 to me.

24 And another thing with my, like, birth certificate
25 and paperwork, it wasn't that -- I don't want the Court to

1 think that I didn't try. It was something that was on my mind
2 every day from the time that I was released from IDOC, but I
3 was just being railroaded a lot, saying that you need this to
4 get this, but if you have nothing to start from, it's just a
5 railroad. And that's another thing.

6 I just want to let the Court also know that the
7 sentence imposed today, Your Honor, it will be a turning point
8 for myself, and I just want to be a better man for those in my
9 community.

10 And also, I understand that you was saying how from
11 my other times being released and this time, I didn't have a
12 plan. Like, my plan was to just -- only thing I wanted to do
13 was just come home, and that's it. That was my plan, just to
14 come home, but now I really have a plan. Like, I understand
15 family is precious and life is precious itself. I didn't
16 understand that when I was younger. I didn't even know I was
17 going to make it to see that, to get in my 20s, you know. And
18 I probably wouldn't have if I wasn't incarcerated, doing the
19 things that I was doing.

20 But with that being said, I just want to thank you
21 for your time and your understanding, Your Honor.

22 THE COURT: Thank you, Mr. Liberty.

23 THE DEFENDANT: One other thing I would ask.

24 Can I tell my grandma -- because today is her
25 birthday, I want to tell her happy birthday. That was another

1 reason why I decided not to do the video visit was to see my
2 grandma.

3 THE COURT: And I want to let you know, Mr. Liberty,
4 it's fine that you wanted to do this in person. You know,
5 we're always concerned with everything going on. And we have
6 offered people to be able to do things by video, and a lot of
7 people have agreed to do that, but you're not going to be
8 punished or penalized in any way because you decided to do
9 this in person. That is your right, and, you know, for some
10 defendants, they're more comfortable doing it by video
11 because, you know, they might feel that it's safer and they
12 don't have to worry about being quarantined and things like
13 that, but that's a decision everyone has to make for
14 themselves, and nobody is going to hold it against you in any
15 way that you decided to come here. I completely understand
16 why you made that decision. Okay?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Thank you, Mr. Liberty. Was there
19 anything else you wanted to say?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Okay. Thank you.

22 Put your mask back on. Thanks.

23 Mr. Storino, I did have one other question for the
24 Government before I make a decision here. Should I, in
25 considering a sentence for Mr. Liberty, take into account in

1 any way the earlier carjacking of the Prius which was an
2 offense that Mr. Carter admitted that he was involved in?

3 I don't believe the Government is saying Mr. Liberty
4 was involved in that carjacking; however, he was in the car,
5 and that incident is mentioned in his Presentence
6 Investigation Report. So I wanted to make sure I'm clear on
7 the Government's position. Should I completely disregard it,
8 or is it relevant in some way?

9 MR. STORINO: It's not relevant when you're
10 sentencing Mr. Liberty for what he did.

11 The Government's evidence is that one witness who is
12 looking down from a window identified Mr. Liberty 50 percent.

13 You know, Judge, I thought long and hard about it,
14 but I don't think that's beyond a preponderance of the
15 evidence, so I'm not asking the Court to consider it. I think
16 we should only consider the one carjacking that Mr. Liberty
17 has acknowledged.

18 THE COURT: I take it, Ms. Ramirez, that you would
19 agree with that?

20 MS. RAMIREZ: Absolutely, Your Honor.

21 THE COURT: And that's how I'm going to approach it.
22 I agree. I think that there's certainly not enough evidence
23 in the record for me to draw any conclusions about who else
24 was involved in that, whether it was Mr. Liberty or
25 Mr. Gordon, or somebody else, so I'm not going to consider it

1 at all.

2 Ms. Ramirez, you indicated that you wanted to raise
3 an issue with at least one of the supervised release
4 conditions.

5 MS. RAMIREZ: That's correct, Your Honor. Page 22,
6 Paragraph 16, just the at-work permitting of the probation
7 officer to visit at a reasonable time or as specified, Judge,
8 just the at-work. Obviously, the at-home, school, community
9 service location or other reasonable location specified, we
10 have no issue with that.

11 I think the at-work, I make it a point just because
12 of all of the biases already included when someone has, you
13 know, a case and a probation officer. And then the way I see
14 this one specifically as it relates to Dwayne is just the fact
15 that, you know, it's been so hard for him to get a job
16 already, and there's every other place that Probation can do
17 that. So that was the only one that we were asking the Court
18 to exclude, but everything else we're in agreement with.

19 THE COURT: Including that he observe the re-entry
20 court session?

21 MS. RAMIREZ: Yes, Your Honor. We talked about it.
22 I did not go at length with him, but I think that given his
23 position on everything that he feels is going to be beneficial
24 in providing those tools, I think that that would be
25 beneficial as well.

1 THE COURT: And I know the recommendation from
2 Probation is that he observe one re-entry court. I know my
3 colleague who is very involved in the re-entry court always
4 asks that we direct them to observe two rather than one.

5 I'm inclined to make that change in the conditions of
6 supervised release. Certainly if he observes one and he's
7 completely turned off by it, he can tell his probation
8 officer, and I wouldn't require him to go if the probation
9 officer doesn't direct him to, but I think seeing two is
10 probably helpful.

11 And Mr. Liberty, just so you know what that's about,
12 that's a voluntary program. So that's not something I direct
13 you that you have to join. You just have to go and check it
14 out, and if it's something that you're not interested in,
15 nobody's going to make you join it. And, in fact, even if you
16 are interested in it, you do have to qualify, and they select
17 you for it, but it is a program to help people like yourself
18 who have a lot of potential when they're coming out of custody
19 who just need that additional support and structure to get on
20 their feet, find a job, get their GED, and do all those things
21 that will help you be a productive person down the line. So
22 keep that in mind.

23 Does the Government have any objection to leaving out
24 the at-work requirement?

25 MR. STORINO: No, Your Honor.

1 THE COURT: And just so I can have it in mind as I'm
2 determining a sentence here, is there any issue of restitution
3 for this defendant?

4 MR. STORINO: No, Your Honor.

5 The same as with Mr. Carter. We reached out, and
6 actually, Your Honor, just to be clear, I did speak to the
7 case agent recently, and as to this particular offense, the
8 white Land Rover, the car was returned and there was very
9 minimal damage done to it, so I don't think there would be any
10 need for restitution to the victim of this particular offense.

11 THE COURT: Okay. I'll just ask Counsel to give me a
12 moment here.

13 Okay. If there's nothing further from Counsel, I'm
14 prepared to impose a sentence here.

15 This is always a difficult task to sentence somebody,
16 particularly when they're going to be going to prison for a
17 period of time. And it's particularly difficult here when I
18 have somebody who's committed what I think is a really serious
19 crime with victims who undoubtedly suffered great trauma on
20 the one hand, and, on the other hand, I also have somebody who
21 committed this crime who I think does have a lot of potential,
22 who has support from his family.

23 Many of the defendants who come in my courtroom don't
24 have that kind of support, and I believe that Mr. Liberty's
25 expression of remorse is genuine, that he is thinking about

1 the victims of the crime and understanding what that meant for
2 them. I think he does appreciate that.

3 And so the challenge is to try to find the sentence
4 that recognizes the seriousness of this offense and sends the
5 right message that this is something that can't be repeated by
6 Mr. Liberty or others but also doesn't unnecessarily penalize
7 Mr. Liberty or doesn't sell short the potential that he has.

8 I've considered all the arguments that were
9 presented, the information in the Presentence Investigation
10 Report and elsewhere in the record, the letters that were
11 submitted, and, of course, the guideline range which is
12 advisory, and at the end of the day, what I have determined is
13 to impose a sentence of 75 months followed by three years of
14 supervised release. And here's why.

15 After considering all of the factors: One, I am
16 taking into account, of course, Mr. Liberty's personal history
17 and characteristics, his background. As I said, there are
18 things here that are very positive. He's got the support of
19 his family, he has a lot of potential and has shown by his
20 plan that he has and what he wants to do. He's young, he's
21 got a lot of time to try to put that plan into action.

22 So I've taken all that into account, but I do think
23 that the prior criminal history is concerning, and it's
24 concerning because it does seem to show that there's a pattern
25 of conduct that is getting worse. And one would hope that

1 when you have to do your first real time in a state prison for
2 any period of time that maybe that's a thing that sends the
3 message to turn things in the other direction.

4 So he comes out of custody in 2016. He's on parole
5 for a couple of years. He finally gets his parole discharged,
6 he's got that prior sentence behind him, and three months
7 later, he's involved in this situation. And now there are
8 guns involved and now he's face to face with other people and
9 taking the vehicle.

10 And I don't know why. I'm inclined to just think
11 it's the kind of thing that you do when you're young and you
12 get caught up with other people and you make bad decisions and
13 you probably aren't thinking in that moment of what it is to
14 be on the other side of the gun standing there with your
15 family and your unborn child and worried for your safety at
16 your home.

17 I'm willing to think he probably didn't even have a
18 chance to think about that at the time, but I have to think
19 about that now and make sure that the sentence that I give him
20 sends a message that this is your chance. This is a real
21 sentence. When you serve it and you put it behind you, you
22 can go forward.

23 If you find yourself after you've served the sentence
24 back in trouble again, it's going to be an even more serious
25 offense with even longer time. So this is very much the

1 make-or-break opportunity for Mr. Liberty, and I think it
2 requires a significant sentence to represent that and send
3 that message.

4 Obviously, I'm considering the need to promote
5 respect for the law and to deter Mr. Liberty and others from
6 engaging in these sorts of crimes and need to protect the
7 public from these sorts of crimes.

8 With all of the issues we have with gun violence
9 going on in the city right now, I don't think anybody needs to
10 be reminded how important it is to recognize that and that
11 things escalate when guns are involved, and people get hurt
12 and killed. Sometimes it's the person who has the gun who
13 ends up being on the wrong side of things, and I think that is
14 something that needs to be taken into account.

15 This sentence is lower than the sentence that I gave
16 to Mr. Carter by a little over two years. I believe I gave
17 Mr. Carter 100 months.

18 I haven't considered Mr. Gordon yet at all because he
19 has not pled guilty or gone to trial and does not have a
20 conviction.

21 I think that difference in sentence adequately takes
22 into account the need to recognize that Mr. Liberty's conduct
23 here is less aggravating than that of Mr. Carter's.
24 Mr. Carter had two incidents. Every indication is that
25 Mr. Carter was involved in some actual use of violence

1 involving guns. I don't have that in front of me with
2 Mr. Liberty, and I'm prepared to fully accept that he is an
3 individual out of the three who was just holding the gun and
4 not one of the ones who was actually directly threatening the
5 two victims to get their vehicle.

6 And then I do also want to point out the sentence I'm
7 imposing of 75 months is within the guideline range regardless
8 of whether I agreed with the defense argument on the use of a
9 firearm adjustment or not. And frankly, the sentence would
10 have been the same regardless of whether I found the higher
11 guideline range.

12 Again, I'm looking at it in terms of what I think is
13 sufficient, not greater than necessary. In this case, I think
14 the guidelines are in line with that. That's not always the
15 case, but here, I think that they were.

16 So I've considered all of those things. I'm going to
17 go over in a moment all of the conditions of supervised
18 release that are going to be imposed.

19 I'm going to take the suggestion of defense counsel
20 and not include the requirement that Mr. Liberty be subject to
21 visits from his probation officer while he is at work. And I
22 hope he is at work once he's released and has a job and is
23 able to do that.

24 Pursuant to the Sentencing Reform Act of 1984, it is
25 the judgment of the Court that the defendant, Dwayne Liberty,

1 is hereby committed to the custody of the Bureau of Prisons to
2 be imprisoned for a term of 75 months.

3 Upon release from imprisonment, the defendant will be
4 placed on supervised release for a term of three years.

5 Within 72 hours of release from the custody of the
6 Bureau of Prisons, he shall report in person to the probation
7 office in the district to which he is released.

8 I am not imposing a fine due to the defendant's
9 inability to pay, however, there is a \$100 special assessment
10 that is due immediately.

11 While on supervised release, the defendant shall
12 comply with the following mandatory conditions: He shall not
13 commit another federal, state or local crime; he shall not
14 unlawfully possess a controlled substance; he shall cooperate
15 with the collection of a DNA sample at the direction of his
16 probation officer if such a sample is required by law; and he
17 shall refrain from any unlawful use of a controlled substance
18 and submit to one drug test within 15 days of release on
19 supervised release and at least two periodic tests thereafter,
20 up to 104 periodic tests for use of a controlled substance
21 during each year of supervised release.

22 The defendant shall also comply with the following
23 discretionary conditions: He shall seek and work
24 conscientiously at lawful employment or pursue conscientiously
25 a course of study or vocational training that will equip him

1 for employment; he shall refrain from knowingly meeting or
2 communicating with any person whom he knows to be engaged in
3 or planning to be engaged in criminal activity; and he shall
4 not knowingly meet or communicate with the following persons:
5 His codefendants in this case: Tyran Carter and
6 Terronde Gordon.

7 The defendant shall refrain from excessive use of
8 alcohol which means having a blood-alcohol concentration of
9 greater than .08 percent or any use of a narcotic drug or
10 other controlled substance without a prescription by a
11 licensed medical practitioner.

12 And defendant shall refrain from possessing a
13 firearm, destructive device, or other dangerous weapon.

14 He shall participate at the direction of a probation
15 officer in a substance abuse treatment program which may
16 include urine testing up to a maximum of 104 tests per year.

17 And he shall participate at the direction of a
18 probation officer in a mental health treatment program and
19 take any medications prescribed by the mental health treatment
20 provider.

21 So those treatment programs, Mr. Liberty, that's if
22 your probation officer thinks that it's useful for you to do
23 so. And it may not be, but they will have that ability given,
24 you know, some of the things you've been dealing with.

25 The defendant shall not knowingly leave the federal

1 judicial district where he is being supervised unless granted
2 permission to do so by the Court or probation officer. The
3 Northern District of Illinois which is where we are now
4 consists of Cook, DuPage, Grundy, Kane, Kendall, Lake,
5 LaSalle, Will, Boone, Carroll, DeKalb, Jo Daviess, Lee,
6 McHenry, Ogle, Stephenson, Whiteside, and Winnebago Counties.

7 The defendant shall report to the probation office in
8 the federal judicial district to which he is released within
9 72 hours of his release from imprisonment and shall thereafter
10 report to a probation officer at reasonable times as directed.

11 The defendant shall permit a probation officer to
12 visit him at any reasonable time at home, at school, at a
13 community service location, or another reasonable location
14 specified by the probation officer and shall permit
15 confiscation of any contraband observed in plain view of the
16 probation officer.

17 And the defendant shall notify a probation officer
18 within 72 hours after becoming aware of any change in
19 residence, employer, or workplace and, absent constitutional
20 or other legal privilege, answer inquiries by a probation
21 officer.

22 Defendant shall answer truthfully any inquiries by a
23 probation officer subject to any constitutional or legal
24 privilege. And the defendant shall notify a probation officer
25 within 72 hours if arrested or questioned by a law enforcement

1 officer.

2 And then finally, I'm imposing the following special
3 conditions which I think are necessary and appropriate in
4 light of the defendant's personal history and characteristics
5 and to help him reintegrate back into the community and for
6 him to be effectively supervised by Probation.

7 If he has not obtained a high school diploma or
8 equivalent, he shall participate in a General Educational
9 Development or GED prep course and seek to obtain a GED within
10 the first year of supervision.

11 He shall participate in an approved job skill
12 training program at the direction of a probation officer
13 within the first 60 days of placement on supervision.

14 If unemployed after the first 60 days of supervision
15 or if unemployed for 60 days after termination or layoff from
16 employment, he shall perform at least 20 hours of community
17 service per week at the direction of Probation until gainfully
18 employed. The maximum amount that he shall be required, it
19 would be 300 hours.

20 He shall not enter into any agreement to act as an
21 informer or special agent of a law enforcement agency without
22 the permission of the Court.

23 And the defendant shall observe two re-entry court
24 sessions as instructed by your probation officer.

25 So again, Mr. Liberty, if it just turns out after the

1 first one that you're just not interested, let your probation
2 officer know, and they'll decide whether to send you back to
3 check it out again.

4 These are the conditions of release.

5 Ms. Ramirez, were there any of the conditions of
6 supervised release that you feel should be explained more or
7 more supported by the record?

8 MS. RAMIREZ: I don't believe that's necessary, Your
9 Honor. Thank you.

10 THE COURT: Okay. Are you satisfied that I addressed
11 the main arguments in mitigation?

12 MS. RAMIREZ: I am. Thank you.

13 THE COURT: Are there any counts to be dismissed
14 here, Mr. Storino?

15 MR. STORINO: No, Your Honor.

16 THE COURT: Okay. And there's no issue of
17 restitution. Is there any issue of forfeiture here?

18 MR. STORINO: No, Your Honor.

19 THE PROBATION OFFICER: Excuse me, Your Honor.
20 Danielle from Probation.

21 THE COURT: Yes.

22 THE PROBATION OFFICER: Would you like to waive the
23 costs of custody and supervised release?

24 THE COURT: Yes, I will waive that.

25 Is there any objection, Mr. Storino?

1 MR. STORINO: No, Your Honor.

2 THE COURT: That will be waived.

3 Thank you very much, Ms. Stern.

4 Was there anything else that you needed from me or
5 anything I missed?

6 THE PROBATION OFFICER: No, Your Honor.

7 THE COURT: Thank you.

8 Ms. Ramirez, do you have a request for a designation?

9 MS. RAMIREZ: I do, Your Honor. I have two requests:
10 One, a facility as close to Chicago as possible to facilitate
11 family visitation.

12 THE COURT: I'll do that.

13 MS. RAMIREZ: His whole family lives here in the
14 area.

15 And then secondly, Your Honor, would the Court find
16 it appropriate to please recommend credit as of July 20, 2018,
17 which is the date of arrest?

18 THE COURT: So I'm going to do here what I also did
19 for Mr. Carter, and I'm going to note it in the judgment that
20 the intent is for him to get credit from that date of the
21 arrest.

22 That's my understanding of how it would work under
23 the BOP regulations because his state charges were dropped.
24 So as I understand it, he will get credit for that time
25 because that time is not counted towards another state

1 sentence. If I am wrong about that and the time is counted
2 somewhere else, then it should be counted elsewhere.

3 So that's, I think, the language I used for Carter,
4 indicated at the time would be credited from, in this case,
5 July 20, 2018, to the extent not credited towards another
6 sentence, something along those lines. I believe that's in
7 line with the statute and the operation of the rule, and so
8 there shouldn't be any confusion.

9 Anything else in terms of recommendations?

10 MS. RAMIREZ: That's it. Thank you.

11 MR. STORINO: Your Honor, can I have one moment?

12 THE COURT: Sure.

13 MS. RAMIREZ: We'd ask if you would be inclined to
14 also order the RDAP program as a recommendation. It was
15 included in the probation officer's recommendation.

16 THE COURT: This is based on the prior history of
17 marijuana use?

18 MS. RAMIREZ: Yes.

19 MR. STORINO: It's in the PSR, Your Honor, on
20 Paragraph 75 as well as the defendant also noted that he used
21 promethazine and codeine.

22 THE COURT: Yeah, I'll recommend that he be
23 considered for RDAP. Ultimately, it's not my decision of
24 whether he qualifies, but I know that they'll take it into
25 account. Good.

1 Mr. Liberty, you may appeal your conviction if you
2 believe that your guilty plea was somehow unlawful or
3 involuntarily or if there was some other fundamental defect in
4 the proceedings that you didn't waive your right to appeal
5 through your guilty plea.

6 You may also appeal your sentence.

7 Any notice of appeal must be filed within 14 days of
8 the entry of judgment or within 14 days of the filing of the
9 notice of appeal by the Government.

10 If requested, the clerk will prepare and file a
11 notice of appeal on your behalf. If you cannot afford to pay
12 the cost of an appeal or for appellate counsel, you can ask to
13 appeal in forma pauperis, which means to have the fee waived.
14 And you can ask for court-appointed counsel on appeal.

15 I believe I've covered everything. Is there anything
16 else, Mr. Storino?

17 MR. STORINO: Your Honor, I just have one other thing
18 which is my exhibits. I would like just for them to be made
19 part of the record for appeal, but I would ask that they not
20 be placed on the public docket because they do show the images
21 of the victims.

22 THE COURT: So you are tendering them to the Court in
23 order -- why are you tendering to the Court rather than filing
24 them so that they can be kept -- because in general, if
25 they're tendered to chambers but not put on the docket, they

1 wouldn't be part of the record under appeal.

2 You can tender them to chambers and we can file them
3 on the docket under seal, or I can grant you leave to file
4 them under seal, but one way or the other, they would need to
5 make it onto the docket. They don't have to be made public.

6 MR. STORINO: If the Court would be inclined to grant
7 leave under seal, Your Honor, I would appreciate that.

8 THE COURT: Yeah, that's fine. I'll grant you leave
9 to file. And let's be clear which ones because you've
10 designated them in court as Government's Exhibits 1 and 2.

11 MR. STORINO: Exhibits 1 through 7, actually. And I
12 did provide copies to defense counsel.

13 MS. RAMIREZ: That's correct, Your Honor.

14 THE COURT: And these are the same photos that are in
15 the Government's version of the offense?

16 MR. STORINO: They are, Your Honor. They're just in
17 color and larger photographs.

18 THE COURT: Okay. So that will be -- you're granted
19 leave to file those on the docket under seal, and they'll be
20 made part of the record.

21 MR. STORINO: Thank you, Your Honor.

22 THE COURT: Anything else, Mr. Storino?

23 MR. STORINO: No, Your Honor. Thank you.

24 THE COURT: Anything else, Ms. Ramirez?

25 MS. RAMIREZ: No, Your Honor. Thank you.

1 THE COURT: Anything else Ms. Stern?

2 THE PROBATION OFFICER: No, Your Honor.

3 THE COURT: Okay. Then I believe we're finished.

4 Here. Thank you all, and thank you for following all
5 of our procedures.

6 Mr. Liberty, I do wish you all the best of luck. I
7 know the sentence that I gave you probably sounds like a long
8 time, but you're going to come out and you're going to have so
9 much of your life ahead of you to do all kinds of great
10 things, so I'm going to choose to believe that that's what
11 you're going to do.

12 THE DEFENDANT: Thank you, Your Honor.

13 THE COURT: Good luck to you.

14 THE DEFENDANT: You, too.

15 THE COURT: We're adjourned.

16 (Proceedings adjourned at 4:03 p.m.)

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C E R T I F I C A T E

I, Brenda S. Tannehill, certify that the foregoing is
a complete, true, and accurate transcript from the record of
proceedings on July 23, 2020, before the HON. ANDREA R. WOOD
in the above-entitled matter.

/s/Brenda S. Tannehill, CSR, RPR, CRR

10/22/2021

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date